

REMARKS

The Examiner's attention to the present application is noted with appreciation. Claims 2 and 3 have been amended to correct indefinite antecedent basis. Withdrawn claims 23-36 have been cancelled. New method claims 37- have been added. It is noted that the new method claims have all of the limitations of the pending apparatus claims. Because the apparatus claims are believed to be allowable, entry and allowance as a matter of right of the new method claims is respectfully requested under MPEP 821.04, Rejoinder.

The Examiner rejected claims 1-16 under 35 U.S.C. 103(a) as being unpatentable over Hanners et al. in view of Smith et al. The Examiner rejected claims 17-22 under 35 U.S.C. 103(a) as being unpatentable over Hanners et al. in view of Smith et al. in view of either or Birch or Blumenau. Such rejections are respectfully traversed, particularly as to the claims as amended. The present claims require that the samples be mounted so that they circularly surround a single opening; see for example Fig. 1 of the present application. None of the cited references discloses this particular limitation. For example, in Hanners et al. the air is introduced into the chamber via multiple slots **116** shell **110**, or alternatively in reverse through multiple slots **118** in vertical support member **56** (see Fig. 3 and col.7 line 55-col. 8, line 10). In Smith et al. the air is passed through multiple inlets **115** into a chamber which contacts the bottom **129** of a sample holder. Note that manifold **109** is not part of the chamber; the air may enter the manifold through a single opening but it enters the sample chamber through the multiple inlets. See Figs. 1-2 and the accompanying description in col. 3. Thus, according to MPEP 2143.03, all claim limitations are not taught or suggested by the art cited.

Further, Hanners et al. may not properly be combined with Smith et al. According to MPEP 2143.01, "If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." In addition, "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to

render the claims *prima facie* obvious." The purpose of Hanners et al. is to force ambient air over sample circuits in order to keep them from overheating *during operation of the samples*. Hanners et al. is *not* a thermal testing apparatus. It is noted that the present claims as amended require that the fluid, which has been heated or cooled, actually contacts the samples.

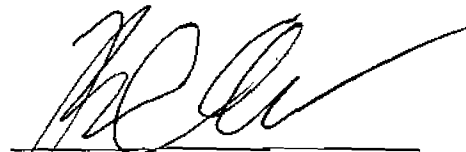
In contrast, Smith et al. teaches a thermal cycling apparatus, but explicitly teaches *against* having the cooling or heating air touching the samples; see col. 3, lines 41-54. It is well known in the art that air cannot directly contact the samples of Smith et al., which are DNA samples, due to contamination and evaporation of the samples. Thus using the apparatus of Hanners et al., which requires the air to be forced over the samples, and does not teach varying a temperature of the air to change a temperature of the samples, to change the temperature of the samples of Smith et al. would change the principle of operation of Smith et al., and in addition render it unsatisfactory for its intended purpose.

In view of the above amendments and remarks, it is respectfully submitted that all grounds of rejection and objection have been avoided and/or traversed. It is believed that the case is now in condition for allowance and same is respectfully requested. If any issues remain, or if the Examiner believes that prosecution of this application might be expedited by discussion of the issues, the Examiner is cordially invited to telephone the undersigned agent for Applicant at the telephone number listed below.

Also being filed herewith is a Petition for Extension of Time to April 6, 2007, with the appropriate fee. Credit card authorization has been given for payment of the fee. Authorization is given to charge payment of any additional fees required, or credit any overpayment, to Deposit Acct. 13-4213.

Respectfully submitted,

By:



Philip D. Askenazy, Reg. No. 56,721
Direct line (505) 998-6132

Attorneys for Applicant(s)
PEACOCK MYERS, P.C.
P.O. BOX 26927
Albuquerque, New Mexico 87125-6927
Telephone: (505) 998-1500
Facsimile: (505) 243-2542

G:\A-CLIENTS\AMDS\Conductor Analysis\166 OA response 4-6-071.doc